IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08/10/2003

Coram

The Honourable Mr.Justice V.KANAGARAJ

Criminal Revision Case No.1296 of 2003
and Criminal Revision Case No.s 1297 and 1298 of 2003

S.Kumar .. Petitioner in all
the above Crl.R.Cs.

-Vs-

M/s.Saptagiri Investments
rep. by T.S.Balaji
having Office at No.73
G.P.M.Chetty Street
Vasavi Complex
Ambapuram
Gudiyatham
Vellore District. ... Respondent in all
the above Crl.R.Cs.

Revisions filed under Sections 397 and 401 of the Criminal
Procedure Code praying for the reliefs as stated below.

For Petitioner : Ms. S.R.Kalyani

For Respondent : Mr. K.A.Ravindhran

:O R D E R
All the above criminal revision cases have been directed
against the orders dated 29-07-2003 made in C.M.P.Nos. 3297, 3298 and 3296 of
2 003 respectively in C.C.Nos. 19, 20 and 21 of 2003 by the Court of Judicial
Magistrate, Gudiyatham, Vellore District.

2. Tracing the history of the case, it comes to be seen
that these are the cases registered against the petitioner under Section 138
of the Negotiable Instruments Act, based on the complaint of the respondent on
the cheques issued for a sum of Rs.50,000/-, Rs.1,00,000/- and Rs.38,000/-
respectively by the petitioner in favour of the respondent, which had bounced.
It further comes to be seen that the petitioner filed petitions in C.M.P.Nos.
3297, 3298 and 3296 of 2003 before the learned Judicial Magistrate, Gudiyatham
seeking to discharge him from the cases in C.C.Nos.19, 20 and 21 of 2003 on
the ground that the respondent has not given separate notice to the Company

and its partners and that the respondent has also not impleaded the Company as one of the accused in the above cases. However, the trial Court i.e., the Court of Judicial Magistrate, Gudiyatham, Vellore District has ultimately dismissed the petitions, concluding that without prosecuting the partnership firm, action can be initiated against the partner under Section 138 of the Negotiable Instruments Act and it is only aggrieved against the dismissal of the said petitions, the petitioner has come forward to file the above Revision Cases on certain grounds as brought forth in the grounds of revisions.

3. During arguments, learned counsel appearing on behalf of the petitioner and the respondent, besides laying emphasis on their respective stands on facts and in law, would also submit case laws in support of their respective cases. So far as the petitioner's counsel is concerned, he would rely on an order passed by a learned single Judge of this Court reported in 2002 (3) CTC 342 (Bangur, S.N. v. Klen & Marshalls Mfrs. & Exporters Pvt.Ltd.), wherein it has been held that in respect of an offence by a company, the presumption under Section 14 1(2) is that the offence has been committed with the consent or connivance of or is attributable to, any negligence on the part of the persons of the company and that a mere allegation that the Directors are responsible for failure to make payment of cheque amount is not sufficient for bringing the offence under Section 141(2) of the Act.

4. Yet another judgment cited in favour of the case of the petitioner is one reported in 2000 (IV) CTC 432 (Nair, K.P.G. v. Jindal Menthol India Ltd.) which is a judgment of the Apex Court, wherein it is held that the Director of a Company, who was not in charge of or was responsible for the conduct of the business of the company at the time of commission of the offence, cannot be prosecuted, as such person does not fall within the purview of Section 141 of the Act; that in respect of the cheque issued by the company, any person of the company can be proceeded against only if that person was in charge of or responsible to the company for the conduct of its business, and since the complaint in that case did not contain any averment regarding the responsibility of the Director in the conduct of the business of the company, the prosecution against such Director of the company was quashed.

5. On the part of the respondent, learned counsel appearing on his behalf would press into service a judgment reported in (2000) 1 SCC 1 (Anil Hada v. Indian Acrylic Ltd.) wherein the Apex Court, finding that the offence committed by the Company is the sine qua non for convicting the other persons, and such person cannot escape penal liability simply because the company is not prosecuted as a result of some legal impediment, held that the High Court rightly dismissed appellant's revision petition.

6. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, it comes to be known that all the above criminal revision cases have been filed by the individual viz., S.Kumar as against M/s. Saptagiri Investments, represented by one T.S.Balaji of Gudiyatham, Vellore District and the petitioner is the accused in C.C.Nos.19, 20 and 21 of 2003. The above cases have been filed respectively on account of the bouncing of the cheques issued

by the petitioner respectively for a sum of Rs.50,000/=, R.1,00,000/= and Rs.38,000/=, he having issued notice against the petitioner for having issued all the three cheques, which have been returned unpaid for insufficiency of funds. He has also registered the case in the said calendar cases in respect of the three bounced cheques. Now, the petitioner has come forward to file the above petitions before the trial court requiring notice to the company without even establishing the responsibility of the company in the above matter when he himself issued the cheques. It is sufficiently held by the Apex Court in the judgment cited above by the respondent to the effect that such persons like the petitioner herein cannot escape the penal liability and punishment simply because the company is not prosecuted as a result of such legal impediment, wherein it was held that the High Court has rightly dismissed the appellant's revision petition, which has been upheld by the Apex Court and the same squarely applies to the case in hand. The judgments cited on the part of the petitioner are general in nature, giving expression to the provisions of Section 141(1) of the Negotiable Instruments Act, which itself cannot prove the case.

7. The trial court, having gone into subject very deep and having assessed the facts and circumstances as pleaded by the revision petitioner herein and having further assessed the legality of the points raised, had ultimately arrived at the unequivocal conclusion to dismiss all the petitions filed by the petitioner, and this Court, particularly in the light of the judgment cited by the learned counsel appearing on behalf of the respondent, is left with no option but to confirm the order of the Magistrate dismissing the applications filed by the revision petitioner herein. Needless to mention that the interference of this Court sought to be made into the well considered and merited orders passed by the trial court is neither necessary nor warranted in the circumstances of the case.

In result,
(i) all the above criminal revision cases do not merit acceptance and they are dismissed.

(ii) The orders dated 29-07-2003 made in C.M.P.Nos. 3297, 3298 and 3296 of 2003 respectively in C.C.Nos. 19, 20 and 21 of 2003 by the Court of Judicial Magistrate, Gudiyatham, Vellore District, are hereby confirmed.

(iii) while dismissing the above revision petitions, the personal attendance of the petitioner before the lower court is hereby dispensed with on all future dates of hearing and to appear by pleader except for those hearings wherein his presence will become indispensable such as for preliminary questioning, questioning under section 313 Cr. P.C., pronouncement of Judgment, etc. when the lower court will be at liberty to summon him in accordance with the procedures laid down under Section 205 Cr.P.C.

(iv) Consequently, Crl.M.P.Nos.8085 to 8090 of 2003 are also dismissed.

gs/paa.

Index:Yes
Internet:Yes

To
The Judicial Magistrate, Gudiyatham, Vellore District.